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Comment on Recent Cases

ADMIRALTY: THE APPLICABILITY OF A STATE EMPLOYER'S LIABILITY ACT TO SEAMEN.—In *State v. Daggett*[1] a seaman on a vessel engaged in intrastate commerce in Washington sought to recover under the Workmen's Compensation Act of that State. The Court held that the statute did not apply to cases of admiralty cognizance.

The Workmen's Compensation Act of Washington provides that the relief therein afforded shall be "exclusive of every other

[1] (Wash., Sept. 13, 1915), 151 Pac. 648.

remedy." Since the seaman has a remedy in admiralty which the state cannot abrogate, the court concluded that it was "the purpose of the act to give the relief therein granted where the Legislature had the power to abolish every other remedy." This disposition of the issue is reached upon the following reasoning: If the statute were held applicable in all its incidents to seamen it would necessarily meet with condemnation as an unconstitutional encroachment upon the admiralty jurisdiction. The maritime jurisdiction reposed in the federal courts by article iii, section 2, of the federal Constitution embraces all actions arising out of torts committed on the navigable waters of the United States, irrespective of the character of the commerce involved[2] The Judiciary Act of 1789 reserves to suitors "the right of a common law remedy where the common law is competent to give it,"[3] and this provision is carried forward in the Judicial Code of 1911.[4] The common law remedy thus reserved is concurrent with the remedy in admiralty, and the state cannot competently make the common law remedy exclusive.[5] It was also suggested, though not decided, that if it were held that the relief afforded by the act should lose its exclusive character as to seamen, the owner of a vessel would thereby be denied the equal protection of the laws assured by the Fourteenth Amendment. If the employer of the seamen were required to pay the prescribed percentage of his pay roll for industrial insurance and still be subject to an action in admiralty by an injured seaman, the burdens imposed by the statute would confer no correlative protection. Therefore, notwithstanding the technical obstacle interjected by the express inclusion of "steamboats, tugs and ferries" in the act, the Washington Supreme Court held that the act did not intend to apply to seamen.

The New York court in the case of In re Walker,[6] came to a contrary conclusion upon this latter point arising under a similar statute. The argument was advanced that since the New York Employers' Liability Act purports to grant exemption from

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[2] The Genesee Chief (1851), 53 U. S. 443, 13 L. Ed. 1058; Lord. v. Steamship Co. (1880), 102 U. S. 541, 26 L. Ed. 224; Wilmington Transp. Co. v. California R. R. Com'n. (1915), 236 U. S. 151, 35 Sup. Ct. Rep. 276.

[3] Berton v. Tietjen & Lang Dry Dock Co. (1915), 219 Fed. 763; Leon v. Galceran (1870), 78 U. S. 185, 20 L. Ed. 74; The Atlas (1876), 93 U. S. 302, 23 L. Ed. 863; Steamboat Co. v. Chase (1872), 83 U. S. 522, 21 L. Ed. 369; Sherlock v. Alling (1876), 93 U. S. 99, 23 L. Ed. 819; Knapp, Stout & Co. v. McCaffrey (1900), 177 U. S. 638, 44 L. Ed. 921, 20 Sup. Ct. Rep. 824; Moran v. Sturges (1894), 154 U. S. 256, 38 L. Ed. 981, 14 Sup. Ct. Rep. 1019; Town of Pelham v. Schooner B. F. Woolsey (1880), 3 Fed. 457.

[4] U. S. Rev. Stat. § 4283; 1913 U. S. Comp. Stat. § 8031.

[5] The Fred E. Sander (1913), 208 Fed. 724.

[6] In Re Walker (1915), 215 N. Y. 529, 109 N. E. 604.

further liability to those who comply with it, and as such exemption is not effectual in the case of employers whose property may be proceeded against in admiralty, the act is as to them a denial of the equal protection of the laws. But the court decided that the exemption intended to be granted was exemption from suits at common law, and that all employers complying with the act have equally the benefit of exemption from common law actions. "If another remedy remains it results from the nature of the case and not from any attempt at discrimination on the part of the legislature. If in certain cases a remedy in admiralty still exists, that results from the dual nature of our government." The Supreme Court of Connecticut under a similar statute reached the same conclusion as the New York court, but based its decision upon the theory that the recovery was in contract and not in tort.[7]

It is a familiar rule of construction that when a statute is susceptible of two constructions, it is the duty of the court so to construe the statute as to preserve its constitutionality, if possible.[8] This rule of constrution has been followed by the New York court.

E. B. B.

ATTORNEYS: DISBARMENT FOR CONVICTION OF CRIME.— *In re Emmons*[1] was a proceeding on a petition for the disbarment of an attorney on the ground of his conviction of a crime involving moral turpitude. The petitioners offered in evidence the record of respondent's conviction of the felony of asking and taking a bribe. To the introduction of this evidence respondent objected on the ground that he had been subsequently duly pardoned for his offense by the governor of the state. The court sustained the objection and dismissed the proceeding.

In its decision the court relies largely on a Texas case decided on a very similar set of facts, quoting with approval and practically adopting the rule of law therein laid down, to the effect that a conviction "having been thus cancelled" by a pardon "all its force as a felony conviction was taken away" and it "could not, therefore, properly be said to afford 'proof of conviction of any felony' ".[2] This reasoning would seem to rest on a false conception of the nature of a pardon.[3] While it is true that a pardon does "cancel" and "take away the force of" a

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[7] Kennerson v. Thames Towboat Co. (Conn., 1915), 94 Atl. 372; Schuede v. Zenith S. S. Co. (1914), 216 Fed. 566.

[8] United States v. Delaware etc. Co. (1909), 213 U. S. 366, 53 L. Ed. 836, 29 Sup. Ct. Rep. 527.

[1] (Dec. 7, 1915), 21 Cal. App. Dec. 800.

[2] Scott v. State (1894), 6 Tex. Civ. App. 343, 25 S. W. 337.

[3] Williston, Does Pardon Blot out Guilt? 28 Harvard Law Review, 647.